UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Leggett & Platt, Inc.,
Employer,
Case 09-RD-200329
and

IAM, Local 619,
Union,
and

William K. Purvis
Petitioner.

PETITIONER'S REQUEST FOR REVIEW

INTRODUCTION

Petitioner William Purvis is employed by Leggitt & Platt ("Employer") and is represented by the International Association of Machinists, Local 619 ("Union"). On June 9, 2017, Purvis filed a decertification petition requesting an election. The Region has blocked his election pending the outcome of unfair labor practices charges in cases 09-CA-194057, 09-CA-196426, and 09-CA-196608. The General Counsel's amended complaint in these consolidated cases is attached as Exhibit A. The Complaint alleges the Employer unlawfully withdrew recognition in March 2017 based on a petition Purvis collected in December 2016, and that his second petition, collected after the union filed charges (which serves as the basis for the June 9 decertification petition), was tainted by Employer support.

Purvis urges the Board to rethink its allowance of "blocking charges" that incumbent unions use strategically and predictably to prevent elections from occurring. This case is particularly egregious because, as the D.C. Circuit recognized in a nearly identical case, a bargaining order cannot be imposed when an Employer withdraws recognition when a Union

conceals its (supposedly) reestablished majority support. *Scomas of Saualito, Inc. v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017). Moreover, as to the General Counsel's claim that Purvis' second petition was somehow tainted by impermissible employer support, no hearing was ever held to determine the truth or falsity of the Union's allegations. *See, e.g.*, *Saint Gobain Abrasives, Inc.*, 342 NLRB 434, 434 (2004). Yet, the decertification petition was summarily blocked.

Pursuant to Board Rules & Regulations §§ 102.67 and 102.71, Purvis submits this Request for Review of the block of his decertification petition because the Board exists to *conduct* elections and thereby vindicate employees' right to choose or reject union representation, not to arbitrarily *suspend* election petitions at the unilateral behest of unions who fear an election loss. *C.f. General Shoe Corp.*, 77 NLRB 124, 126 (1948) (holding that the Board should exercise the power to set aside an election "sparingly" in representation cases because it cannot "police the details surrounding every election" and the secrecy in Board elections empowers employees to express their true convictions). This Request for Review should be granted because the Board's "blocking charge" rules unfairly deny employees their fundamental rights under NLRA Sections 7 and 9. The Board's "blocking charge" rules allow unions to "game the system" and strategically delay all *decertification* elections, even as the Board's new Representation Election Rules, *see* 79 Fed. Reg. 74308 (Dec. 15, 2014) (to be codified at 29 C.F.R. pts. 101, 102, and 103), rush all *certification* petitions to an election with no "blocks" allowed under any circumstances. *See id.* at 74430-74460.

The Board should put to an end to this double standard, order this election to proceed at once, and follow the lead of Chairman Miscimarra, who has urged a wholesale revision of the "blocking charge" rules. *See Cablevision Systems Corp.*, Case 29-RD-138839 (June 30, 2016) (Order Denying Review); *see also Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir.

2001) (finding that Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all."); *Conair Corp. v. NLRB*, 721 F.2d 1355, 1381 (D.C. Cir. 1983) (citing the "NLRA's core principle that a majority of employees should be free to accept or reject union representation.").

In short, this Request for Review, challenging the Board's "blocking charge" rules, raises questions of exceptional national importance. *See* Rules & Regulations § 102.71(a)(1) & (2) (indicating that Requests for Review should be granted when "(1) . . . a substantial question of law or policy is raised . . . [or] (2) [t]here are compelling reasons for reconsideration of an important Board rule or policy."). Petitioner asks the Board to: grant the Request for Review; reactivate the election petition; and overrule, nullify, or substantially revise the "blocking charge" rules. Such action by this Board will provide more protection for employees' right to choose or reject unionization at a time they choose, and less protection for incumbent unions that "game the system," unilaterally block elections, and cling to power despite their unpopularity.

FACTS

During late 2016, Purvis and his fellow employees began collecting signatures for a decertification petition. They eventually collected signatures from over 50% of the employees in the bargaining unit. On December 19, 2016, Purvis delivered his majority petition to the Employer and requested a withdrawal. On January 11, 2017, the Employer stated to the employees and the Union that it would withdraw recognition based on this petition when the collective bargaining agreement ("CBA") expired on February 28. The Employer eventually withdrew recognition from the Union on March 1. *See* Ex. 1. At the time the Employer withdrew recognition the petition was supported by 167 signatures out of a bargaining unit of 295 (56.6%

of the unit).[1]

That very same day, the Union filed charges against the Employer, claiming the withdrawal was unlawful because the Union had regained majority support. Apparently, during the period between January 11 and March 1, the Union circulated a counter petition that sought to reestablish majority support. The Union's petition contained 28 "cross-over" signatures—employees who signed both the decertification petition and the Union's petition.[2] Prior to revealing its counter-petition to the Region as part of unfair labor practice charges, the Union had never presented its evidence to the Employer or Purvis.

Despite the Union's counter petition, however, the record still shows the December 16 decertification petition was supported by well over 30% of the bargaining unit. Purvis, understanding that his petition was imperiled by the Union's charges, began collecting another petition for an election.

On June 9, Purvis filed the RD petition in this case. This second petition is again supported by well over 50% of the bargaining unit. The Region has blocked Purvis' election petition on the basis of the pending charges against the Employer. On June 15, the General Counsel issued an amended complaint alleging: (1) the Employer unlawfully withdrew recognition based on the Union's hidden petition allegedly reestablishing majority support; (2) the Employer unlawfully withdrew recognition because withdrawals of recognition violate the Act; (3) after withdrawal, the Employer made unilateral changes to the terms and conditions of employment; and (4) in April 2017 an agent of the Employer directed some employees to sign

[1] 15 employees who had signed the petition had left the bargaining unit by March 1.
[2] Petitioner does not concede that these purported "cross-over" signatures are valid. *See Johnson Controls, Inc.*, NLRB Case No. 10-CA-151843, ALJ Decision at 13-15 (finding Union's cross-petition was invalid because employees did not understand what they were signing and still supported decertification petition).

the second petition to decertify the Union. Ex. A.

By these actions and blocking the election, the Regional Director diminished and denied Petitioner's and other employees' *statutory rights* to decide their representational preferences for themselves under Sections 7 & 9 of the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 157 & 159.

ARGUMENT

I. The allegations contained in the General Counsel's Complaint alleging an unlawful withdrawal should not stop the employees from testing the Union's majority in a secret ballot election.

Delaying the employees' election is only delaying the inevitable. In a nearly identical case the D.C. Circuit ruled the Board cannot issue a bargaining order as a remedy if a Union conceals its regained majority support until after a withdrawal. *Scomas*, 849 F.3d at 1156. Without a bargaining order, there can be no bar to an election, even if the Employer was initially wrong to withdraw recognition.

In *Scomas*, employees collected a majority decertification petition they filed with the Board for an election. Those employees also gave a copy of the majority petition to their employer, Scomas, asking it to withdraw recognition. Before Scomas withdrew recognition, the union persuaded six employees to sign a form stating they revoked their decertification signatures and again supported the union. *Id.* at 1153. Without these six signatures, the decertification petition lost majority support, but was still supported by well over 30% of the bargaining unit. *Id.* at 1158. The union concealed the employees' revocation from Scomas and petitioner until after Scomas withdrawal of recognition, and the petitioner's withdrawal of his election petition. *Id.* Six days later, the union filed unfair labor practice charges claiming the employer unlawfully withdrew recognition because the union still maintained majority support.

The Board found Scomas committed a violation of the Act and imposed a bargaining order in order to prevent Scomas and the dissenting employees from "raising a question concerning the Union's majority status during the required bargaining period." *Id*. at 1154.

The D.C. Circuit reversed the Board's order. It noted an "affirmative bargaining order is an extreme remedy, because according to the time-honored board practice it comes accompanied by a decertification bar that prevents employees from challenging the Union's majority status for at least a reasonable period." *Id.* at 1156 (quoting *Caterair Int'l v. NLRB*, 22 F.3d 1114, 1122 (D.C. Cir. 1994)). Because the union withheld information about its restored majority status, the Board could not ignore the impact of a bargaining order on employee free choice:

> Even after six unit employees revoked their signatures, at least 42 per cent (23 ÷ 54) of the unit employees supported an election. The Board contends that, because Scomas "did not demonstrate that the Union *actually* lost the support of a majority of employees," an election would not be an appropriate "alternative remed[y]." That makes no sense. The threshold for an election is 30 per cent, not 50 per cent.

Scomas, 849 F.3d at 1157-58 (internal citations omitted).

This case is nearly identical to *Scomas*. Here, Purvis collected a majority petition and presented it to his Employer. His Employer withdrew recognition from the Union based on the information Purvis and the Employer had at hand on March 1. There is no allegation the first petition given to the Employer was tainted by unfair labor practices. Meanwhile, because the Union hid its allegedly reestablished majority support, Purvis was unable to file a petition seeking an election with the Board, as he would have done if his first petition lacked majority support. Under *Scomas*, ordering an election to occur is the only remedy. *Id.* at 1158. Indeed, the General Counsel has taken the position that *Leviz Furniture*, 333 NLRB 717 (2001) should be overturned and the only way questions of representation can be settled is through an election. Ex. A at 8(b), *see also* NLRB General Counsel Memorandum 16-03 (May 9, 2016).

In short it makes no sense to block an election in these circumstances. Purvis and his fellow employees have easily met the threshold to hold an election. Under *Scomas* a bargaining order cannot be imposed and there will be an election someday. Its far better to conduct the election now than wait several years while the unfair labor practices progress through the Board and the federal courts to an all but certain conclusion. *See Scomas*, 849 F.3d at 1159-60 (decrying blocking charges that prevented an election or withdrawal occurring for over three-years as "tricks") (Henderson, J., concurring)

II. To block an election the Union must first prove there is a casual nexus between the alleged unfair labor practices and employee dissatisfaction.

Using the Board's "blocking charge" rules, the Regional Director prevented the Petitioner and the rest of their bargaining unit from voting to decertify a Union, based on the Union's claim an agent of the company instructed employees to sign Purvis' second decertification petition.

The Regional Director should have held a hearing pursuant to *Saint Gobain Abrasives, Inc.*, 342 NLRB at 434, in order for the Union to prove there exists a causal relationship between its alleged unfair labor practices and employee dissent. In order for an unfair labor practice to taint a petition or block an election there must be a "casual nexus" between an Employer's unfair labor practice and the employees' dissatisfaction with the Union. *Id.* "[I]t is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Id.*

Relying on *Master Slack Corporation*, 271 NLRB 78 (1984), the Region should be required to promptly determine if a causal relationship exists by analyzing a number of factors including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the

union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Id.* at 84.

Here, the Regional director made a decision to block the election based, in part, on an allegation that the Employer may have directed a few employees to sign the second decertification petition. However, it is hard to understand how these charges, even if true, have led to any employee dissatisfaction with the Union. None of the charges allege unilateral changes that are essential terms and conditions of employment. The types of violations that cause dissatisfaction "are those involving coercive conduct such as discharge, withholding benefits, and threats to shutdown the company operation." *See Tenneco Auto, Inc. v. NLRB*, 716 F.3d 640, 650 (D.C. Cir. 2013) (finding employer's refusal to provide union addresses of replacement employees, requirement that employees obtain company permission before posting materials, and discipline of union advocate did not taint petition); *see also Goya Foods of Fl.*, 347 NLRB 1118, 1122 (2006) (finding that hallmark violations are those "issues that lead employees to seek union representation"). The issues involved in this case are far from hallmark violations. These are not the types of issues that cause employees "to seek union representation." *Goya Foods of Fl.*, 347 NLRB at 1122. Its also hard to understand how these later allegations taint the petition when Purvis' prior December 2016 petition—which the Region has never alleged to be tainted—had well over the 30% threshold for an election. Over 30% of employees registered their dissent *months ago*.

This case should be used to reestablish, at the very least, *Saint-Gobain* hearings. The Union filed a Charge alleging the Employer somehow influenced the Petition. The Petitioner disputes the facts in that Charge had any influence on employee dissatisfaction of the Union—Purvis collected an untainted decertification petition only months before that had well over the

requisite 30% showing to hold an election. As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." 342 NLRB at 434. At a hearing, the incumbent union will be required to bear the burden of proof concerning the existence of a "causal nexus." *See, e.g., Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517-18 (1970) (holding that party asserting the existence of a bar bears the burden of proof); *Saint-Gobain Abrasives, Inc.,* 342 NLRB at 434.

III. There exists good cause to revisit the Board's blocking charge policies.

Even if it can be said, *arguendo*, that the Employer actually committed violations alleged in the unfair labor practices charges, "[t]he wrongs of the parent should not be visited on the children, and the violations of [the employer] should not be visited on these employees." *Overnite Transp. Co.*, 333 NLRB 1392, 1398 (2001) (Member Hurtgen, dissenting). Employees enjoy a statutory *right* to petition for a decertification election under NLRA Section 9(c)(1)(A)(ii), and that right should not be trampled by arbitrary rules, "bars," or "blocking charges" that prevent the expression of true employee free choice.

Employee free choice under Section 7 is the paramount interest of the NLRA. *See Pattern Makers League v. NLRB*, 473 U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (employee free choice is the "core principle of the Act") (quotation marks and citation omitted). An NLRB-conducted secret-ballot election is the preferred forum for employees to exercise their right of free choice. *See Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717, 725-26 (2001). Industrial stability is enhanced when employees vote in secret ballot elections, since this ensures that employees actually support the workplace

representative empowered to speak exclusively for them. Yet, the "blocking charge" rules sacrifice this right of *employee* free choice based on the whim and strategic considerations of even an unpopular incumbent union clinging to power.

The Regional Director's reflexive application of the "blocking charge" policies ignores the fact that Petitioner and his fellow bargaining unit members may wish to be free from Union representation, irrespective of any alleged employer infractions. Yet the employees are being treated like children who cannot possibly make up their own minds. This is wrong. *Overnite Transp. Co.*, 333 NLRB at 1398 (Member Hurtgen, dissenting); *Cablevision Systems Corp.*, Case 29-RD-138839 (June 30, 2016) (Order Denying Review) (Member Miscimarra, dissenting).

The Board's jurisprudence on blocking elections must be drastically overhauled. The Board has long operated under a system of "presumptions" that prevent employees from exercising their statutory rights under Sections 7 and 9(c)(1)(A)(ii) to hold a decertification election whenever a union files so-called "blocking charges." However, this "blocking charge" practice is not governed by statute. Rather, its creation and use lies within the Board's discretion to effectuate the policies of the Act. *American Metal Prods. Co.*, 139 NLRB 601, 604-05 (1962); *see also* NLRB Casehandling Manual (Part Two) Representation Sec. 11730 et seq. (setting forth the "blocking charge" procedures in detail). The "blocking charge" rules stop employees from exercising their paramount Section 7 right to choose or reject representation, which is not a proper use of the Board's discretion.

For this reason, the Board's practice of delaying and denying elections has faced judicial criticism. *NLRB v. Minute Maid Corp.*, 283 F.2d 705, 710 (5th Cir. 1960) ("[T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold

otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented"); *NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968).

Indeed, the Board's policies often deny decertification elections even where the employees are not aware of the alleged employer misconduct, and where their disaffection from the union springs from wholly independent sources. Use of "presumptions" to halt decertification elections serves only to entrench unpopular but incumbent unions, thereby forcing an unwanted representative onto employees. Judge Sentelle's concurrence in *Lee Lumber* specifically highlights the unfairness of the Board's policies. 117 F.3d at 1463-64.

Most of these "bars" and "blocking charge" rules stem from discretionary Board policies (*see, e.g.*, Section 11730 of the NLRB Casehandling Manual concerning "blocking charges") that should be reevaluated when industrial conditions warrant. *See, e.g., IBM Corp.*, 341 NLRB 1288, 1291 (2004) (holding that the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special function of applying the Act's general provisions to the "complexities of industrial life") (citation omitted)). Here, the Board should take administrative notice of its own statistics, which show that 30% of decertification petitions are "blocked," whereas certification elections are *never* blocked for any reason. *See* NLRB, *Annual Review of Revised R-Case Rules*, https://www.nlrb.gov/sites/default/files/attachments/news-story/node-4680/R-Case%20Annual%20Review.pdf. Rather, in the context of challenges to a certification petition, the Board holds the election first and settles any challenges after. If the Board can rush certification petitions to prompt elections by holding all objections and challenges until afterwards, it can surely do the same thing for decertification petitions. 79 Fed. Reg. 74308, 74430-74460 (Dec. 15, 2014). It is time for the Board to eliminate its discriminatory "blocking

charge" rules, which apply solely to those employees seeking to refrain from supporting a union. The Board must create a system for decertification elections whereby those employees are afforded the same rights as employees seeking a certification election to support a union.

Here, the Region should be ordered to proceed to an immediate election without further delay. Petitioner and his colleagues are not sheep, but responsible, free-thinking individuals who should be able to make their own choice about unionization. The employees' paramount Section 7 rights are at stake, and their rights should not be so cavalierly discarded simply because their Employer is alleged to have committed a violation or made a technical mistake under the labor laws. Purvis urges the Board to overrule or overhaul its "blocking charge" policies to protect the true touchstone of the Act—*employees*' paramount right of free choice under Section 7. *Int'l Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961) (holding that "there could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter into a collective bargaining relationship when a majority of employees do not support union representation); *see also Saint Gobain Abrasives, Inc.*, 342 NLRB at 434.

CONCLUSION

The Board should grant the Request for Review and order the Regional Director to promptly process this decertification petition. It should also overrule or substantially overhaul its "blocking charge" rules that are used and abused to arbitrarily deny decertification petitions.

Respectfully submitted,

/s/ Aaron B. Solem

Aaron B. Solem
c/o National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160
Telephone: (703) 321-8510
Fax: (703) 321-9319
abs@nrtw.org
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2017, a true and correct copy of the foregoing Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

A. John Harper, Attorney at Law
Littler Mendelson, P.C.
1301 McKinney Street, Suite 1900
Houston, TX 77002
AJHarper@littler.com

William Haller
Billy Stivers
International Association of Machinists and
Aerospace Workers, AFL-CIO (IAM)
690 East Lamar Boulevard, Suite 580
Arlington, TX 76011-1711
whaller@iamaw.org
bstivers27@bellsouth.net

Garey E. Lindsay, Regional Director
NLRB, Region 9
John Weld Peck Federal Building
550 Main Street Room
3003 Cincinnati, OH 45202
Garey.Lindsay@nlrb.gov

/s/ Aaron Solem

Aaron Solem

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

LEGGETT & PLATT, INC.

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (IAM), AFL-CIO

Cases 09-CA-194057
09-CA-196426
09-CA-196608

ORDER FURTHER CONSOLIDATING CASES, SECOND CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

On May 22, 2017 an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in Cases 09-CA-194057 and 09-CA-196608 alleging that Leggett & Platt, Inc. (Respondent) had engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT those cases are further consolidated with Case 09-CA-196426, filed by International Association of Machinists and Aerospace Workers (IAM), AFL-CIO (Union) which alleges that Respondent has engaged in further unfair labor practices within the meaning of the Act.

This Second Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 09-CA-194057 was filed by the Union on March 1, 2017, and a copy was served on Respondent by U.S. mail on March 2, 2017.

(b) The charge in Case 09-CA-196608 was filed by the Union on April 10, 2017, and a copy was served on Respondent by U.S. mail on April 12, 2017.

(c) The charge in Case 09-CA-196426 was filed by the Union on April 6, 2017, and a copy was served on Respondent by U.S. mail on April 7, 2017.

(d) The first amended charge in Case 09-CA-196426 was filed by the Union on May 26, 2017, and a copy was served on Respondent by U.S. mail on May 31, 2017.

2. (a) At all material times, Respondent has been a corporation with offices and places of business on New Street and on Ecton Road in Winchester, Kentucky (Respondent's facilities), and has been engaged in the manufacture and the nonretail sale of commercial and residential furnishings.

(b) In conducting its operations during the preceding 12-month period ending May 31, 2017, Respondent sold and shipped from Respondent's facilities goods valued in excess of $50,000 directly to points outside the Commonwealth of Kentucky.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Chuck Denisio - Branch Manager
Stephen Day - Human Resources Manager

5. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> The [Respondent's] production and maintenance employees at the [Respondent's] New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the [Respondent's] over-the-road drivers, office clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined in the Act.

6. (a) Since about September 1965 and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from February 28, 2014 to midnight on February 28, 2017.

(b) At all times since at least September 1965, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

7. (a) Since about March 1, 2017, following the expiration of the collective-bargaining agreement on February 28, 2017, Respondent has failed to remit to the Union dues deducted pursuant to valid, unexpired, and unrevoked employee checkoff authorizations.

(b) About early April, 2017, the exact date being presently unknown to the General Counsel, Respondent by Stephen Day, at Respondent's facility in Winchester, Kentucky directed employees to meet with a fellow employee to sign a petition to decertify the Union.

8. (a) About March 1, 2017, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

(b) About March 1, 2017, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit in the absence of the results of a Board election.

(c) About March 1, 2017 and at various dates thereafter, the exact dates being presently unknown to the General Counsel, Respondent made the following changes to Unit employees' terms and conditions of employment:

Wages
Paid Personal Time
Health Insurance
Vacation
Stock Bonus Plan
401(k) Plan
Dental Insurance
Vision Insurance
Flexible Spending Plan
Life Insurance
Short Term Disability Insurance
Long Term Disability Insurance
Job Bid Procedures

(d) The subjects set forth above in paragraph 8(c) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

9. By the conduct described above in paragraphs 7 and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. By the conduct described above in paragraph 8, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 7, 8, 9 and 10, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative, Chuck Denisio, to read the notice to the employees on work time in the presence of a Board agent and a union representative. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during work time in the presence of Chuck Denisio and a union representative.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the seconded consolidated complaint. The answer must be **received by this office on or before June 29, 2017 or postmarked on or before June 28, 2017**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon

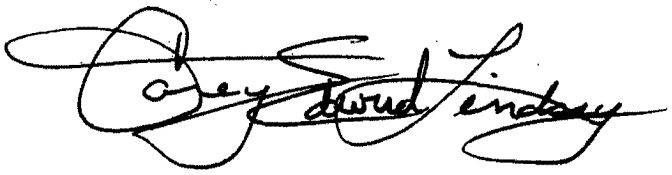
(Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the second consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **July 24, 2017, 1 p.m.** at the **Law Library, Montgomery County Courthouse Annex, 44 West Main Street, Mt. Sterling, Kentucky**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this second consolidated complaint. The procedures to be followed at the hearing

are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 15, 2017



Garey E. Lindsay, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments